IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6440 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOTHARI MANHARLAL RATILAL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BJ JADEJA for Petitioner(s) : 1,
M/S PATEL ADVOCATES for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/11/2005

CAV JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality

and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 30th October, 1992 in Revision Application No. TEN/BA/64 of 1990 in dismissing the same and confirming the order passed by the Deputy Collector, Dhrangadhra dated 30th December, 1989 in Ceiling Case No.2 of 1988-89.

2. The petitioner was holding agricultural lands at village Sapkada, Chitrodi, and Dighadia in Halvad Taluka of Surendranagar District. He had transferred 34 Acres and 17 Gunthas of land by way of family arrangement as well as in one case by sale. It is the contention of the petitioner that the family arrangement was made in the year 1970 but the entry was made in the year 1971 and therefore, the petitioner made an application under Section 8 of the Gujarat Agricultural Lands Ceiling Act; 1960 (herein after referred to as “the Act” for short) for declaration that the transfers made by him were not made in anticipation in order to defeat the object of Amending Act of 1972 and the said application was rejected, against which the petitioner preferred a revision application before the Gujarat Revenue Tribunal being Revision Application No. TEN/BA/428 of 1981 and the

Gujarat Revenue Tribunal by its judgment and order dated 7th July, 1982 allowed the said revision application and remanded the matter to the Deputy Collector, Dhrangadhra for deciding the same afresh, only on the ground that the heirs of transferee were not heard. On remand, though the transferee/heirs of the transferee were served more particularly, heirs of Vinodkumar Kothari, nobody remained present on their behalf and ultimately, after giving an opportunity to the petitioner and other interested brothers and/or their heirs, the Deputy Collector, Dhrangadhra by his order dated 30th December, 1989 dismissed the said application by holding that the petitioner has failed to prove that the aforesaid transfer of 34 Acres and 17 Gunthas of land was not made in anticipation in order to defeat the object of the Amending Act of 1972. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Dhrangadhra dated 30th December, 1989, the petitioner preferred a Revision Application before the Gujarat Revenue Tribunal being Revision Application No. TEN/BA/64 of 1990 and the Gujarat Revenue Tribunal vide its judgment and order dated 30th October, 1992 dismissed the said revision application confirming the order passed by the Deputy Collector, Dhrangadhra dated

30th December, 1989. Feeling aggrieved and dissatisfied with the same, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

3. Shri B.J.Jadeja, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Gujarat Revenue Tribunal has failed to appreciate that the land held by the petitioner formed part of joint family property wherein his brothers had their shares and therefore, the family arrangement which was made in the year 1970, but the entry whereof was made in the year 1971, was not made in anticipation in order to defeat the object of the Amending Act of 1972. It is further submitted that there is no partition of the joint family property was made before the family arrangement was made in the year 1970 and therefore, the land which were held in the name of the petitioner belonged to the joint family. It is submitted by Shri Jadeja, learned advocate that though the certificate under Section 54 of the Saurashtra Gharkhed Tenancy Settlement & Agricultural Lands Ordinance; 1949 was obtained in the name of the petitioner but the same would ensure for the benefit of the joint family

inasmuch as he was holding the lands on behalf of the joint family. It is further submitted that so far as the transfer in favour of Harijan Karsan Jivabhai is concerned, there was a genuine transaction but the authorities below have failed to appreciate the same.

4.Per contra, Shri Bhate, learned AGP while supporting the judgment and order passed by the Gujarat Revenue Tribunal has submitted that the judgment and order passed by the Gujarat Revenue Tribunal is based upon the appreciation of evidence and considering the provisions of the Gujarat Agricultural Lands Ceiling Act, more particularly, Sections 7 and 8 of the said Act, it is rightly held that the petitioner was holding the land in his personal capacity in the year 1970 and not for and on behalf of the joint family and that the sale/transfer in favour of his brother and one Harijan Karasan Jivabhai in the year 1970 was hit by Section 8 of the Gujarat Agricultural Lands Ceiling Act as it has rightly been held that the said transfer was with a view to defeat the provisions of the said Act. It is further submitted that the partition has already taken place in the year 1961 not only that even the certificate under the aforesaid Saurashtra Gharkhed

Tenancy Settlement & Agricultural Lands Ordinance; 1949 was in favour of the petitioner in his personal capacity and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is required to be noted that 34 Acres and 17 Gunthas of land came to be transferred by the petitioner in favour of his brother and one Harijan Karasan Jivabhai in the year 1971, more particularly, on 22nd July, 1971. The Deputy Collector, Dhrangadhra by order dated 30th December, 1989 dismissed the application submitted by the petitioner for a declaration that transfer of land admeasuring 34 – Acres and 17 – Gunthas was not with a view to defeat the provisions of the Gujarat Agricultural Lands Ceiling and the said order came to be confirmed by the Gujarat Revenue Tribunal against which, the present Special Civil Application is filed under Article 227 of the Constitution of India. Both the authorities below on appreciation of documentary evidence have come to the conclusion that the partition has already taken place somewhere in the year 1971

and/or prior thereto and the land in question was in favour of the petitioner in his personal capacity and for which even the certificate was issued under the provisions of the Saurashtra Gharkhed Tenancy Settlement & Agricultural Lands Ordinance; 1949 and the same was also in his individual capacity. All through out, the same continued to be in the name of the petitioner and in the year 1971 the land admeasuring 34 Acres and 17 Gunthas came to be transferred under the guise of partition in favour of his brothers that too on 22nd July, 1971 and 7 Acres and 14 Gunthas of land came to be transferred by way of sale in favour of Harijan Karasan Jivabhai on 17th September, 1971. Any sale after specified date as per Section 8 of the Act is to be considered with a view to defeat the provisions of the Act and the same is not permissible. Considering the above, both the authorities below have rightly held that the aforesaid transfer was with a view to defeat the provisions of the Gujarat Agricultural Lands Ceiling Act. The order passed by the Deputy Collector has rightly been confirmed by the Gujarat Revenue Tribunal and as such the same is in consonance with the provisions of the Gujarat Agricultural Lands Ceiling Act, more particularly,

Sections 7 and 8 of the Act and the same is not required to be interfered with by this Court in a petition under Article 227 of the Constitution of India. No jurisdictional error, much less an error of law, has been committed by the Gujarat Revenue Tribunal, which requires interference of this Court exercising powers under Article 227 of the Constitution of India. The judgment and order passed by the Gujarat Revenue Tribunal is on appreciation of evidence on record, which is not required to be reappreciated by this Court while exercising powers under Article 227 of the Constitution of India.

7. For the reasons stated above, it cannot be said that the order passed by both the authorities below, more particularly, by the Gujarat Revenue Tribunal, are in any way illegal and/or contrary to the provisions of the Act. Under the circumstances, the present petition is required to be dismissed and the same is accordingly dismissed. Rule is discharged. Interim relief stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.